

**NOTICE OF APPEAL FROM THE PRIMARY EXAMINER TO
THE BOARD OF PATENT APPEALS AND INTERFERENCES (Small Entity)**

Docket No.
COTE/971/US

In Re Application Of: **Armand Cote**

Serial No.
09/140,049

Filing Date
08/26/98

Examiner
Glessner, B.

Group Art Unit
3635

Invention: **Breakaway Utility Pole**

TO THE ASSISTANT COMMISSIONER FOR PATENTS:

Applicant(s) hereby appeal(s) to the Board of Patent Appeals and Interferences from the decision of the Primary Examiner dated **11/2/00** finally rejecting Claim(s) 1-14

Applicant is a small entity under 37 CFR 1.9 and 1.27.

A verified statement of small entity status under 37 CFR 1.27:

- ☐ is enclosed.
- ☒ has already been filed in this application.

The fee for this Notice of Appeal is: **\$155.00**

- ☒ A check in the amount of the fee is enclosed.
- ☐ The Commissioner has already been authorized to charge fees in this application to a Deposit Account. A duplicate copy of this sheet is
- ☐ The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No.
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Dated: 3/2/01

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Signature of Person Mailing Correspondence

Joyce Murphy
Typed or Printed Name of Person Mailing Correspondence

cc:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	ARMAND COTE	Paper No.:	
Serial No.:	09/140,049	Examiner:	GLESSNER, B.
Filed:	08/26/98	Group No.:	3635
For:	BREAKAWAY UTILITY POLE	Docket No.:	COTE/971/US

To the Commissioner of Patents and Trademarks
Washington, DC 20231




CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited in the U.S. Postal Service as first-class mail in an envelope addressed to Commissioner of Patents and Trademarks, Washington, DC 20231, on March 2, 2001.

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Joyce G. Murphy

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REMARKS ACCOMPANYING NOTICE OF APPEAL

The Applicant appeals the rejection of record in this case.


As to the Examiner's suggestion in paragraph 2 of the Office Action regarding adding the words "adapted to" to claim 13, the Applicant is willing to agree to such amendment. Since this is a final Office Action, however, the Applicant has not included the amendment therewith. The Applicant suggests that the Examiner enter the amendment by Examiner's amendment if such is considered to be allowable given the final nature of the Office Action.

Regarding the obviousness rejection, the Applicant respectfully disagrees. As set forth in the remarks accompanying the last response filed by the Applicant, the references in combination do not disclose the construction of claim 13, with solid lower and upper sections and a hollow intermediate section. Even if Andersson is read as disclosing the lower member be solid after it

is filled with concrete, there is no suggestion of making the upper portion solid. The Examiner found that it would have been obvious to make Andersson's third pole portions solid because additional strength may be needed. However, this is clearly hindsight reconstruction of the reference, as there is no such disclosure in Andersson, and Andersson already describes a construction for carrying power lines. Thus, Andersson, with his teaching of a hollow upper section, actually teaches away from a solid upper section.

The Applicant does respectfully suggest that the claims be allowed. If the Examiner disagrees for any reason, the Applicant would suggest a telephone call with Applicant's attorney at 508-791-8500.

Respectfully submitted,



Brian M. Dingman
Reg. No. 32,729